

STATE OF MICHIGAN
COURT OF APPEALS

FLOOD SOLUTIONS, INC., d/b/a RAINBOW
INTERNATIONAL CARPET & WATER
RESTORATION,

Plaintiff-Appellee,

v

REGINALD HAGGARD and ERICA HAGGARD,

Defendants-Appellants.

UNPUBLISHED
November 9, 2010

No. 294206
Oakland Circuit Court
LC No. 2008-092792-CK

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Defendants appeal as of right from an order directing defendant's attorney to pay costs and fees in the amount of \$2,333.50. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint seeking payment for work that had been performed on defendants' residence. Pursuant to the parties' agreement, defendants were to directly pay for expenses not covered by insurance. Defendants were under the impression that plaintiff's bill had been paid in full with a check issued by the insurer. Defendant Reginald Haggard's mother hired defense counsel to represent Haggard. Haggard personally advised counsel that he wanted to defend the action. Unbeknownst to defense counsel and Haggard's mother, Haggard had filed for bankruptcy four days before plaintiff's complaint was filed. After plaintiff obtained a default judgment against Haggard, the bankruptcy lawyer contacted plaintiff's counsel and advised of the bankruptcy proceeding. Plaintiff's counsel then informed defense counsel of the proceeding.

Plaintiff moved for sanctions against defense counsel pursuant to MCR 2.114(E). Plaintiff maintained that if defense counsel had made a reasonable inquiry, he would have learned of the bankruptcy proceeding. Moreover, plaintiff claimed that it would not have undertaken some of the work on this case if it had known of the bankruptcy proceeding.

The trial court said that if "someone is at fault here, perhaps it trickled down to [defense counsel], maybe not." It then compared Haggard's fault in the matter to the color red and defense counsel's culpability to the color pink. The court awarded plaintiff half of the attorney fees and costs requested so as "to be consistent with the level of culpability."

We review a trial court's decision regarding the imposition of sanctions under MCR 2.114 for clear error. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

MCR 2.114(D)(2) provides that the signature of an attorney on a pleading constitutes a certification that "to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." If this rule is violated, MCR 2.114(E) provides for a sanction on the person who signed the document, including reasonable attorney fees.

We conclude that defense counsel was not at fault for failing to make a reasonable inquiry. It would be absurd to require an attorney to inquire of the client whether he had filed for bankruptcy when the client retains the attorney to defend an action against a creditor. It simply would not be reasonable to require an attorney to undertake such an examination in such a circumstance.

Reversed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad